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**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

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| THE PEOPLE,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>EDWARD G. WATKINS,<br><br>Defendant and Appellant. | B216152<br><br>(Los Angeles County<br>Super. Ct. No. BA346624) |

APPEAL from a judgment of the Superior Court of Los Angeles County, John S. Fisher, Judge. Affirmed.

Lise M. Breakey, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Victoria B. Wilson and Steven D. Matthews, Supervising Deputy Attorneys General, for Plaintiff and Respondent.

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Edward G. Watkins appeals from the judgment entered after a jury convicted him of one count of possession of cocaine base (a lesser-included offense of possession of cocaine base for sale, the charged offense) and found true the special allegation he had suffered a prior strike conviction within the meaning of the "Three Strikes" law (Pen. Code, §§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)).[1] Watkins contends the trial court erred in striking his trial testimony in its entirety after he refused to answer questions during cross-examination. He also contends the court erred in failing to conduct a hearing following his request for the appointment of new counsel, denying his request to represent himself and refusing to dismiss his prior strike conviction in the interests of justice. We affirm.

## FACTUAL AND PROCEDURAL BACKGROUND

1. *The Information*

Watkins was charged in an information with one count of possession for sale of cocaine base (Health & Saf. Code, § 11351.5). The information also alleged Watkins had suffered one prior strike conviction within the meaning of the Three Strikes law and had served two prior separate prison terms for felonies within the meaning of section 667.5, subdivision (b). Watkins pleaded not guilty and denied the special allegations, which were bifurcated and tried separately from the charged offense.

2. *The Trial*

According to the evidence presented at trial, Watkins was walking across the street in downtown Los Angeles when Los Angeles County Police Department officers Jorge Cruz and Sean Stablewski stopped and searched him.[2] The officers found a small clear plastic bag in his right short pants pocket containing seven individually wrapped off-white rocks later determined to be cocaine base. The total weight of the seven rocks was

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1 Statutory references are to the Penal Code unless otherwise indicated.

2 The jury was instructed the legality of the search (a parole search) was not at issue at trial.

2.37 gross grams. No pipes or other paraphernalia were recovered. In addition to the rock cocaine, the police officers found two cents in Watkins's pocket.

Los Angeles Police Detective Patrick Aluotto opined, based on his education, training and experience, the amount of cocaine base and the circumstances of this case, that Watkins had possessed the cocaine base for purposes of sale.

Watkins testified in his own defense, explaining he did not possess cocaine base and did not know why he was arrested. He admitted on direct examination he had prior convictions for voluntary manslaughter and felony false imprisonment. After Watkins expressly refused to respond to some of the prosecutor's questions during cross-examination and was non-responsive to others, the court struck his testimony in its entirety and told the jury to disregard it.

3. *The Jury's Verdict and Sentence*

The jury was instructed in accordance with CALCRIM No. 2302 (possession for sale of a controlled substance) and CALCRIM No. 2304 (simple possession of a controlled substance), a lesser-included offense of possession for sale. The jury acquitted Watkins of the charge of possession of cocaine base for sale but convicted him of the lesser-included offense of simple possession. In a bifurcated proceeding the jury also found true he had suffered a prior qualifying strike conviction for voluntary manslaughter in 1995.

The trial court denied Watkins's request to dismiss his prior strike conviction in the interests of justice and sentenced him to six years in prison,[3] consisting of three years (the upper term) for the possession offense (Health & Saf. Code, § 11350, subd. (a)), doubled under the Three Strikes law.[4]

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3 Watkins was prohibited, as a result of his 2005 conviction and sentence for felony false imprisonment, from receiving probation for his possession offense pursuant to section 1210.1 (Proposition 36). (See § 1210.1, subd. (b).)

4 The trial court exercised its discretion pursuant to section 1385 and dismissed the specially alleged section 667.5, subdivision (b), allegations in furtherance of justice.

## DISCUSSION

1. *The Trial Court Did Not Err in Striking Watkins's Trial Testimony in Its Entirety*

a. *Relevant proceedings*

After the People had rested their case, Watkins's attorney indicated the defense intended to rest its case as well without calling Watkins to testify. Following some colloquy on administrative matters, the court sought to confirm Watkins's waiver of his right to testify. Watkins replied he had changed his mind and wanted to testify. The court reminded Watkins his three prior felony convictions would be admissible if he chose to testify. Watkins complained he was "pretty much innocent of all those acts that I was accused of, like past previous crimes." The court replied, "You don't get to explain the priors. It's just whether you were convicted, yes or no. There's no ability for you to be questioned about that nor can you just interject it. . . ." Watkins responded he understood and had "nothing to hide." At defense counsel's request, the court adjourned for the day to give her time to consult with Watkins about the substance of his testimony.

Prior to Watkins's testimony the next day, the court admonished Watkins outside the presence of the jury, "[Y]ou've got to understand you just have to answer the question. If you start throwing in other information I'm going to cut you off. It won't look good. And I'll say to the jury that I told you not to do that and so it won't look good. So just answer the questions. The lawyer will get it all out for you and then the cross-examination and so on. So that's it, okay?"

During his direct examination, Watkins claimed he had been crossing the street when he was stopped by police, not loitering in the street as the police officers had testified. Watkins insisted he had no cocaine in his possession when he was detained. Watkins's lawyer also asked whether had a prior conviction for voluntary manslaughter and a prior conviction for false imprisonment. Watkins initially answered the question by attempting to explain his conduct giving rise to those prior convictions. The court interjected, stating, "No, wait. Wait. I told you how you were going to answer that yesterday. That's a yes or no or I don't know. So it's not an explanation, remember? So

just say what we said. You can answer in the following manner. Yes, or no or I don't know." Watkins responded, "It was none of those." The court tried again, "Time out. Did you hear what I said? That was the way we told you before you got on the witness stand and agreed to it. So just do it now and that's what the lawyer's asking you." Watkins's counsel also attempted to explain to Watkins her questions referred to his record of conviction, not the facts surrounding his convictions. Watkins continued to try to explain he was innocent of the prior offenses. The court (and his counsel) repeatedly attempted to stop him. Finally, the court said, "Sir, do you want to testify or not?" Watkins told the court he understood the court's instructions and acknowledged he had been convicted of the two prior crimes.

During cross-examination, Watkins explained he had been in a car with a "lady friend" before getting out and crossing the street. When asked directly the name of the woman he was with, Watkins refused to answer. The court permitted the cross-examination to continue, telling the jury it could consider Watkins's refusal to answer the question "any way you want."

The prosecutor then attempted to inquire whether Watkins had been on parole for the false imprisonment offense at the time he was arrested in this case. Watkins again attempted to explain he was innocent of the false imprisonment offense. The court warned Watkins, "If you do that again, I'm going to have you sit down and you won't testify." Watkins then gave an unresponsive and rambling answer directed to his lack of culpability in the prior false imprisonment case, stating, "Checking on my daughter, nothing being wrong with her. I'm sitting here before you and throwing that charge and you. . . . That's why we trying to get to the point that I had this or not. I'm letting you know I didn't."

The court excused the jury and Watkins from the courtroom and granted the prosecutor's motion to strike the defendant's testimony in its entirety. The court explained, "Well, this in the first time in my career I've had to do this. There's just no way an orderly process of this trial can go on with this particular gentleman here, so the record is—I'm going to strike his entire testimony and I'm just going to tell the jury to

disregard it. . . . He's not answering the questions. He's refusing to abide by the court's instructions . . . . And so this is basically him, in effect, telling the court and the system basically to go stick it. So, we're not going to put up with that." The court denied Watkins's motion for a mistrial.

b. *Governing law and standard of review*

"[T]he right to introduce evidence necessarily implicates the responsibility to permit [that evidence] to be fairly tested." (*Fost v. Superior Court* (2000) 80 Cal.App.4th 724, 736.) Although a criminal defendant has a constitutional right to testify in his or her own behalf, that right is tempered by the corollary principle that, once the defendant chooses to testify, the People may fully amplify that testimony "'by inquiring into the facts and circumstances surrounding [the defendant's] assertions, or by introducing evidence through cross-examination [that] explains or refutes [the defendant's] statements or the inferences [that] may necessarily be drawn from them.'" (*People v. Harris* (1981) 28 Cal.3d 935, 953; accord, *People v. Seminoff* (2008) 159 Cal.App.4th 518, 525; see also *Brown v. United States* (1958) 356 U.S. 148, 155 [78 S.Ct. 622, 2 L.Ed.2d 589] [criminal defendant "has no right to set forth to the jury all the facts which tend in his favor without laying himself open to cross-examination upon those facts"]; *Fost*, at p. 736; *People v. Reynolds* (1984) 152 Cal.App.3d 42, 46 [defendant's refusal to answer relevant questions may deprive the prosecution of its right to subject the defendant's claims "'to the greatest legal engine ever invented for the discovery of truth,' cross-examination"].)

When any witness, including a criminal defendant, refuses to submit to proper cross-examination regarding material issues and thereby precludes the prosecutor from adequately testing the defendant's direct testimony, "the striking out or partial striking out of direct testimony is common, and has been allowed even where the result was to deprive a criminal defendant of the fundamental constitutional right to testify in his own behalf." (*Fost v. Superior Court, supra,* 80 Cal.App.4th at p. 736; see *People v. Price* (1991) 1 Cal.4th 324, 421 ["If a witness frustrates cross-examination by declining to answer some or all of the questions, the court may strike all or part of the witness's

testimony"]; see also *People v. Reynolds, supra,* 152 Cal.App.3d at pp. 47-48 [trial court did not abuse its discretion in striking criminal defendant's testimony in its entirety after defendant refused to answer cross-examination questions directed to the identity of his accomplices in the crime; such refusal effectively denied the prosecution opportunity for effective cross-examination].)

Because striking a defendant's testimony in its entirety is "a drastic solution" (*People v. Seminoff, supra,* 159 Cal.App.4th 518; *People v. Reynolds, supra,* 152 Cal.App.3d at p. 47), the trial court should resort to that remedy only "after less severe means are considered" (*Reynolds,* at p. 48), such as striking the testimony in part or instructing the trier of fact to consider the witness's refusal to answer in evaluating the witness's credibility (*Sanders,* at p. 1638; *Seminoff,* at pp. 525-526). The court should also consider the materiality of the question and whether the defendant's refusal to answer has any effect on the ability of the prosecutor to conduct a thorough cross-examination. (See *Seminoff,* at p. 527 ["[g]ranted, there are instances where the cross-examiner's questions are so peripheral to the case that the witness's refusal to answer them does not justify the sanction of striking"].)

We review the trial court's ruling striking all or part of the defendant's testimony for abuse of discretion. (*People v. Reynolds, supra,* 152 Cal.App.3d at p. 47; see also *People v. Price, supra,* 1 Cal.4th at p. 421 [when expert witness indicated in advance he would refuse to answer relevant questions on cross-examination, trial court acted within its discretion in prohibiting the testimony in its entirety]; but cf. *People v. Sanders, supra,* 182 Cal.App.4th at p. 1638 [applying independent review to determine whether trial court's refusal to strike witness's testimony after witness refused to answer questions on cross-examination deprived defendant of fair trial].)

c. *The trial court's ruling striking Watkins's testimony was not an abuse of its discretion*

Watkins contends less severe means (other than striking his entire testimony) could have been used to sanction his behavior, such as instructing the jury to disregard his nonresponsive answers during cross-examination. In fact, the trial court made several efforts to employ less severe means in an effort to rein in the defendant's outbursts[5] and obtain his compliance with court rulings without resorting to striking his testimony. For example, when Watkins refused to answer peripheral questions such as the name of the woman who was in the car with him just before he was stopped by police, the court permitted the cross-examination to continue and instructed the jury it could consider his refusal to answer in evaluating his credibility. The trial court also advised Watkins prior to his testimony to refrain from offering details of his prior convictions and was forced by Watkins's disregard of those instructions to repeat that admonition multiple times during his testimony. However, when Watkins either refused or offered nonresponsive answers to the prosecutor's cross-examination questions about his prior convictions, thereby depriving the prosecutor of the ability to effectively cross-examine him on this material credibility issue, there was little the trial court could do. Striking the "inadmissible details" of those prior convictions, as Watkins proposes, would have left his direct testimony intact while effectively striking all of the cross-examination inquiry on the same subject.

Watkins's contention the remedy was too drastic because the cross-examination questions sought information on a collateral issue—his credibility—is without merit. Watkins's credibility was central to his defense. (See *People v. Seminoff*, *supra*, 159 Cal.App.4th at p. 527 ["[t]here can be little doubt . . . that the right of cross-examination takes on added significance where the witness's credibility is of special significance to

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5 Because of prior outbursts, Watkins had to be restrained with a "stealth belt" during the proceedings, a device that attaches to the chair and prevents the defendant from standing. At other times in the proceedings, Watkins either refused to be present in the courtroom or was excluded from the courtroom for behavioral misconduct. Watkins does not challenge those rulings on appeal.

the proceedings"].) Either the jury believed him or it believed the police officers. His prior convictions were admissible to impeach his credibility. (See Evid. Code, § 788; *People v. Castro* (1985) 38 Cal.3d 301, 313-317.)[6] Yet, Watkins's nonresponsive answers to cross-examination questions directed to those prior offenses and challenging his credibility deprived the prosecutor of the right to conduct meaningful cross-examination. (See *Fost v. Superior Court, supra,* 80 Cal.App.4th at p. 736; *People v. Reynolds, supra,* 152 Cal.App.3d at pp. 46-47.) Under the circumstances the trial court did not abuse its discretion in striking Watkins's testimony in its entirety. (See *Seminoff,* at p. 527 ["If the trial court had believed Bassett's story and her testimony about the marijuana, it would almost certainly have granted defendants' suppression motion. The whole case hinged upon her credibility. The ability of the prosecution to test that credibility and probe the basis of her knowledge regarding the marijuana was a sine qua non to resolution of the motion."].)

2. *The Trial Court Did Not Err in Denying Watkins's Request To Represent Himself or in Failing To Conduct a Second Marsden[7] Hearing*

a. *Relevant proceedings*

On January 22, 2009, before voir dire, Watkins told the court he wanted a new court-appointed attorney. The court properly conducted a hearing under *People v. Marsden* (1970) 2 Cal.3d 118 and, following the hearing, denied the request.

On February 27, 2009, after the jury was impaneled and sworn and an Evidence Code section 402 hearing had commenced concerning the admissibility of statements made by Watkins to the arresting officers, Watkins asked the court if he could represent

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6 The trial court excluded Watkins's 2005 misdemeanor conviction for obstructing a peace officer in the performance of the officer's duties, concluding it had little, if any, probative value.

7 *People v. Marsden* (1970) 2 Cal.3d 118 addresses the circumstances under which a criminal defendant has a right to have his or her appointed counsel replaced and the procedures to be used by the trial court in determining whether those circumstances exist. The hearing prescribed to address the defendant's request for substituted counsel is known as a *Marsden* hearing.

himself. The court ruled the request was untimely and, exercising its discretion, denied the request after Watkins told the court he would need a continuance to be able proceed in propria persona. The court addressed another administrative matter and then stated it would take a 10-minute break. Following the court's statement it was "on a 10-minute break," Watkins asked, "So can I hire another attorney? Say I get another attorney. How would that work? Would he have time to do my case?" The record shows no response to Watkins's questions.

a. *Watkins's motion to represent himself*

A criminal defendant has the right under the Sixth and Fourteenth Amendments to the Constitution to waive his or her right to counsel and to represent himself or herself. (*Faretta v. California* (1975) 422 U.S. 806, 819 [95 S.Ct. 2525, 45 L.Ed.2d 562] ["[t]he Sixth Amendment does not provide merely that a defense shall be made for the accused; it grants to the accused personally the right to make his defense"]; *People v. Koontz* (2002) 27 Cal.4th 1041, 1069 ["'A defendant in a criminal case possesses two constitutional rights with respect to representation that are mutually exclusive. A defendant has the right to be represented by counsel at all critical stages of a criminal prosecution. [Citations.] At the same time . . . because the Sixth Amendment grants to the accused personally the right to present a defense, a defendant possesses the right to represent himself or herself.'"].)

A defendant's right to self-representation, however, is absolute only if he or she invokes that constitutional right a reasonable time prior to the start of trial. (*People v. Windham* (1977) 19 Cal.3d 121, 127-128 ["in order to invoke the constitutionally mandated unconditional right of self-representation a defendant in a criminal trial should make an unequivocal assertion of that right within a reasonable time prior to the commencement of trial"]; accord, *People v. Lawrence* (2009) 46 Cal.4th 186, 191-192.) """When a motion for self-representation is not made in a timely fashion prior to trial, self-representation no longer is a matter of right but is subject to the trial court's discretion." [Citation.] In exercising this discretion, the trial court should consider factors such as "'the quality of counsel's representation of the defendant, the defendant's

prior proclivity to substitute counsel, the reasons for the request, the length and stage of the proceedings, and the disruption or delay which might reasonably be expected to follow the granting of such a motion.'"'" (*People v. Valdez* (2004) 32 Cal.4th 73, 103.)

Here, the request for self-representation, made at the end of jury selection, was untimely and conditioned on the court's grant of a continuance. Under those circumstances, the denial of Watkins's *Faretta* motion on the ground it would cause undue delay was not an abuse of the trial court's discretion. (See, e.g, *People v. Valdez, supra,* 32 Cal.4th at pp. 102-103 [trial court did not abuse its discretion in denying *Faretta* request on ground defendant's untimely request, made just before jury selection, was effort to cause delay]; *People v. Jackson* (2009) 45 Cal.4th 662, 690 [court did not abuse its discretion in denying defendant's request to represent himself; request was made "too late," after a full day of voir dire and court reasonably determined permitting defendant to represent himself at that late date would have caused undue delay].)[8]

b. *Marsden hearing*

When a criminal defendant seeks substitution of counsel on the ground that appointed counsel is providing inadequate representation, a trial court must give the defendant a hearing and an opportunity to explain the reasons for the request. (*People v. Marsden, supra,* 2 Cal.3d at p. 120; accord, *People v. Chavez* (1980) 26 Cal.3d 334, 347 ["'A trial judge is unable to intelligently deal with a defendant's request for substitution of attorneys unless he [or she] is cognizant of the grounds which prompted the request. The defendant may have knowledge of conduct and events relevant to the diligence and competence of his attorney which are not apparent to the trial judge from observations within the four corners of the courtroom. . . . A judicial decision made without giving a

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8 Although Watkins and the Attorney General both assert the request for self-representation was made during voir dire, the record is clear voir dire had concluded at the time the request was made. In any event, whether made during voir dire or just after voir dire had concluded, the request was untimely. (See, e.g., *People v. Valdez, supra*, 32 Cal.4th at pp. 102-103; *People v. Jackson, supra*, 45 Cal.4th at p. 690.)

party an opportunity to present argument or evidence in support of his contention "is lacking in all the attributes of a judicial determination."""].)

"Although no formal motion is necessary, there must be 'at least some clear indication by defendant that he wants a substitute attorney.'" (*People v. Mendoza* (2000) 24 Cal.4th 130, 156-157; accord, *People v. Dickey* (2005) 35 Cal.4th 884, 920; see also *People v. Richardson* (2009) 171 Cal.App.4th 479, 484 ["we will not find error on the part of the trial court for failure to conduct a *Marsden* hearing in the absence of evidence that defendant made his desire for appointment of new counsel known to the court"].)

Watkins contends the trial court committed reversible error by failing to afford him a second *Marsden* hearing. However, Watkins never made clear a desire to obtain substitute representation due to some inadequacy of his counsel. Although Watkins made his comments—"So can I get another attorney? How would that work? Would he have time to do my case?"—following the trial court's denial of his request for self-representation, the request for self-representation, by itself, does not imply dissatisfaction with counsel so as to trigger an obligation to hold a *Marsden* hearing. (See *People v. Mendoza*, *supra*, 24 Cal.4th at p. 157 [defendant's unequivocal expressed desire for self-representation is not tantamount to a request for substitute counsel; "[g]iven defendant's insistence on self-representation, the trial court was under no obligation to conduct an inquiry into any dissatisfaction defendant might have with his appointed counsel so as to necessitate substitution of counsel"].)

Moreover, when considered in context, the questions Watkins now emphasizes as sufficient to trigger a *Marsden* hearing are more akin to an "'impulsive response'" to the court's denial of his request for self-representation and the concomitant request for a continuance rather than an unambiguous assertion of the existence of a problem with his counsel. (Cf. *People v. Barnett* (1998) 17 Cal.4th 1044, 1087 [defendant's reference to making a motion to proceed in pro. per. is "properly viewed as an 'impulsive response' to the magistrate's refusal to immediately consider his *Marsden* request rather than an unequivocal request for self-representation"]; *People v. Marlow* (2004) 34 Cal.4th 131, 147 [defendant's comments—"'Is it possible that I just go pro per in my own defense and

have someone appointed as co-counsel?'"—was a request for information, not an unambiguous motion to represent himself].)

In any event, even if Watkins's questions had been sufficiently clear to indicate some dissatisfaction with counsel, they were asked at the same time or just after the court announced a 10-minute recess, and not renewed after the court resumed, thereby depriving the court of any meaningful opportunity to hear and consider them. Watkins's failure to make his request for substitute counsel known to the court in a manner that would have allowed court to properly consider it only reinforces our conclusion that the trial court had no obligation to conduct a second *Marsden* hearing. (See *People v. Mendoza*, *supra*, 24 Cal.4th pp. 156-157; *People v. Dickey*, *supra*, 35 Cal.4th at p. 920.)

3. *The Trial Court Did Not Abuse Its Discretion in Refusing To Dismiss a Prior Conviction Under Section 1385*

Section 1385, subdivision (a), vests the court with discretion to dismiss a prior conviction, including a qualifying strike conviction, "in furtherance of justice." (*People v. Superior Court* (*Romero*) (1996) 13 Cal.4th 497, 530; *People v. Williams* (1998) 17 Cal.4th 148, 158.) "[I]n ruling whether to strike or vacate a prior serious and/or violent felony conviction allegation or finding under the Three Strikes law . . . or in reviewing such a ruling, the court . . . must consider whether, in light of the nature and circumstances of his present felonies and prior serious and/or violent felony convictions, and the particulars of his background, character, and prospects, the defendant may be deemed outside the [Three Strikes] scheme's spirit, in whole or in part, and hence should be treated as though he had not previously been convicted of one or more serious and/or violent felonies." (*Williams*, at p. 161.)

We review the trial court's refusal or failure to dismiss a prior strike allegation under section 1385 for abuse of discretion. (*People v. Carmony* (2004) 33 Cal.4th 367, 376.) "[T]he three strikes law not only establishes a sentencing norm, it carefully circumscribes the trial court's power to depart from this norm and requires the court to explicitly justify its decision to do so. In doing so, the law creates a strong presumption that any sentence that conforms to these sentencing norms is both rational and proper.

[¶] . . . [¶] . . . '[I]t is not enough to show that reasonable people might disagree about whether to strike one or more' prior conviction allegations. [Citation.] . . . Because the circumstances must be 'extraordinary . . . by which a career criminal can be deemed to fall outside the spirit of the very scheme within which he squarely falls once he commits a strike as part of a long and continuous criminal record, the continuation of which the law was meant to attack' [citation], the circumstances where no reasonable people could disagree that the criminal falls outside the spirit of the three strikes scheme must be even more extraordinary." (*Id*. at p. 378.)

Watkins contends the court abused its discretion in denying his motion to dismiss his 1995 conviction for voluntary manslaughter pursuant to section 1385 because the court only considered the nature of the prior manslaughter offense and failed to take into account other relevant factors, including the relatively minor nature of the current possession offense, the remoteness of the prior conviction and the fact Watkins had not been the shooter in the 1995 homicide.[9]

Contrary to Watkins's contention, there is no evidence the trial court failed to consider all the relevant factors in deciding whether to dismiss his prior strike conviction. In addition to Watkins's motion, the trial court was presented with the People's written opposition, detailing various reasons Watson did not fall outside the spirit of the Three Strikes law: Watkins was convicted in 1995 of voluntary manslaughter and sentenced to nine years in state prison. While on parole for that offense, he was found to have violated his parole and was returned to prison. He was discharged from parole in September 2003. In 2005 he was convicted of felony false imprisonment, was sentenced to 32 months state prison and was on parole for that offense when he committed the instant offense.

The trial court struck the specially alleged prior prison term allegations (§ 667.5, subd. (b)) in the interest of justice, but refused to strike the voluntary manslaughter

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9 At sentencing the court stated, "The court declines to strike any strikes based on the nature of the strike, voluntary manslaughter."

conviction, concluding Watkins did not fall outside the spirit of the Three Strikes law. Although the court emphasized the nature of the prior conviction for voluntary manslaughter in reaching its conclusion, nothing in the record suggests that was the only basis for its decision. Simply stated, Watkins has not demonstrated the court's denial of his motion to dismiss that prior strike conviction amounted to an abuse of the court's discretion.

**DISPOSITION**

The judgment is affirmed.

PERLUSS, P. J.

We concur:

ZELON, J.

JACKSON, J.